

REMARKS

In the Office Action dated March 31, 2005, all claims were rejected under 35 U.S.C. §§ 102(e) or 103/102(e) as being unpatentable over U.S. Patent No. 6,849,089 to Stoll (the “Stoll ’089 patent”), either alone or in combination with U.S. Patent No. 6,339,130 to Bennett et al.

By this Amendment, the Applicant has canceled claims 2, 3, 6-8, 18 and 22 without prejudice, has amended claims 1, 4, 9, 11-17 and 19, and has added new claims 24-27.

Independent claim 1 recites a plurality of first and second coated pellets, wherein the coating of the first pellets is thinner than the coating on the second pellets, and wherein each of the first pellets “contains a substance in addition to the first therapeutic composition such that each of the first coated pellets is substantially the same size as each of said second coated pellets.” This subject matter is described in several places in the specification wherein alternate embodiments are disclosed with pellets containing therapeutic in addition to another substance.

For example, paragraph 40 on page 13 states:

[0040] The micro coated pellets can be of the same size or can have different sizes depending on the desired release rate and/or the underlying drug composition. To keep the micro coated pellets at substantially the same size, the pellets with the fastest release rate can contain some inert chemical, such as mannitol. If the pellets having the faster release rate are supplied with a thinner micro coating, the addition of an inert compound would serve to increase the volume of the pellet while keeping the drug content constant. In one embodiment of the invention, the pellet size is less than 50 μm .

The Applicant respectfully submits that the Stoll ’089 patent does not disclose or suggest the invention as claimed in claim 1, wherein pellets have different coating thicknesses but substantially the same overall size. In the Stoll ’089 embodiment of Figure 7, the microcapsules have different coating thicknesses, but they have different sizes. Nowhere does the Stoll ’089

reference disclose placing an additional substance in some of the microcapsules to result in microcapsules having substantially the same size despite different coating thicknesses. The Applicant respectfully submits that claim 1 is patentable over the prior art of record.

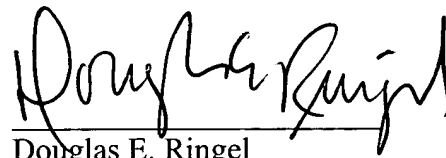
Applicant's claim 12 recites first and second coated pellets, the second coated pellets having a coating thicker than the first pellets, "wherein each of said first coated pellets contains a substance in addition to the first active substance and each of said first coated pellets is substantially the same size as each of said second coated pellets." Claim 17 recites first and second pellets wherein the protective layer of the first pellets has a different thickness than the protective layer of the second pellets and "wherein said first pellets contain a substance in addition to the therapeutic composition and each of said first and second pellets is substantially the same size." Neither the Stoll '089 patent nor any of the other references of record discloses or suggests these claimed inventions.

For the record, the Applicant reserves the right to swear behind the Stoll '089 patent and does not admit that the Stoll '089 patent is prior art. Nevertheless, the Applicant respectfully submits that the above claims are patentable over the Stoll '089 patent because the Stoll '089 patent does not disclose or suggest the inventions as now claimed. Accordingly, the Applicant respectfully submits that all claims are now in condition for allowance, and passage to issue is respectfully requested.

The Office is hereby authorized to charge any additional fees under 37 C.F.R. §1.16 or §1.17 or credit any overpayment to Deposit Account No. 11-0600. Should any questions arise concerning this matter, the Examiner is invited to contact Applicants' undersigned attorney at (202) 220-4200.

Respectfully submitted,

Date: June 30, 2005



Douglas E. Ringel
Registration No. 34,416

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, D.C. 20005-1257
Tel.: (202) 220-4200
Fax.: (202) 220-4201

574105